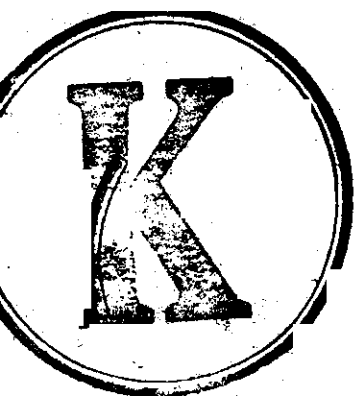


1941.

File No. O. Societies
Legal Department

A BRANCH



Subject:—

Opinions under the

Societies Registration

Act-1860

p. 19

File No.

O. Societies

QUESTIONS

Legal Department File No. 3. Questions Registration/41.

No.	Compilation No.	Subject	Pages
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Questions under the sections
Registration Act, 1960.

1 O.No. 776 27/1/41.
O.No. 3992/3/5/41.

Question whether a mining
company is a member of
a corporation.

1-4

O.No. 1069/11/9/41.

Question whether it is a
company for the purpose of
upon registration of the
Mines Welfare League on
the ground that the League
is not a "mine" under
by law. "Donation" receipt

5-6

3 O.No. 931/29/10/41.
O.No. 2264/15/11/41.

Question whether a
company for the purpose of
collection of funds
offered against the provisions
of Sec. 134-A of the I. A. (2).
Whether the Registrar can
refuse registration on the
ground that only a small
percentage is to be utilized for
charitable purposes.

7-20.

4/20/5

★ V. L. ...

R.L.A.'s Office.

The Venue Department is requested to obtain a copy of the rules and regulations of the Association regarding the admission of Members.

Sd/-

O.C.

For Remembrancer of Legal Affairs.

U.R. to R.D., No. 778 dated the 27th
January 1941.

V.V.
25/4/56.

The capacity of an infant to be a member of a corporation depends on whether the charter or statute under which the corporation is constituted expressly or by implication prevents infants to be members of it (see Halsbury's Laws of England Vol.17 at p.660). The question whether an infant is capable of being a member of a corporation is a question of construction and depends upon whether the act of incorporation authorizes or prohibits such membership (Re Royal Naval School, Seymour v. Royal Naval School, 1910, 1 Ch. 806). It is no doubt true that neither the Rules of the French Sanitary Association ~~in its constitution~~ nor the provisions of the Societies Registration Act, 1860 under which the association is registered expressly prohibit minors from becoming members of the association. But such membership appears to have been prohibited by implication. Rule 14 provides for election of the managing committee every three years by the general meeting of the association. Every member of the Association has a right to vote at such election and also to stand for such election. Section 13 of the Societies Registration Act provides for dissolution of a society ~~REGISTRATION~~ when any number not less than three-fifths of the members of any society may determine that it shall be dissolved and under section 14 members may determine the manner of disposal of the assets of the society after dissolution. It is clear from these provisions that members of the French Sanitary Association are given certain powers which cannot be ordinarily exercised by minors. In most municipal laws there is a provision precluding minors from both becoming members of the corporation and exercising the right to elect such members. In my opinion therefore the minor Thakor of Jhenor cannot legally become a member of the French Sanitary Association. The question whether the Court of Wards can sanction a sum of Rs.25 for the Thakor's membership does not survive.

O.C. 82/-P.N.M.
2/5

Remembrancer of Legal Affairs.

U.R. to F.N. No. 3992, dated the 3rd May 1941.

Office of the R.L.A.

The question raised for consideration of the R.L.A. is whether it would be competent for the Registrar to refuse registration of the Bombay Welfare League on the ground that the League ~~on the ground~~ proposes to raise funds by issuing "receipts".

2. Clause III(1) of the Memorandum of Association of the Bombay Welfare League provides for raising funds by inviting donations or subscription from the public. Rule 11 of the Rules and Regulations of the League inter alia lays down: "The Sub-Committee shall carry on the distribution of funds out of the net receipts of the Donation Receipts put up for the public at large, the distribution to be carried out of the percentage shown on the donation receipts". There are no provisions in the rules as to how the "Donation Receipts" scheme is to be carried out. It appears from what Mr. Katpatia, Solicitor, told the Registrar that the "Donation Receipts" are numbered and that the holders of a few selected numbers receive large cash prizes. It is not however clear from this statement whether the "Donation Receipts" scheme comes within the purview of section 284A of the Indian Penal Code. If on further investigation it is found that it does, there would be no legal objection to the Registrar refusing registration to the Welfare League under the Societies Registration Act, 1860, on the ground that the means to achieve its objects are unlawful.

O.C. Sd/-P.N.M.
8/7

Remembrancer of Legal Affairs.

Sd/-
8/7/41.

U.R. to F.D. No. 5999, dated the 11th July 1941.

Office of the P. S. A.

Statement of the case for the opinion of the
Advocate General.

In this case the Bombay Welfare League has applied to the Registrar of Companies, Bombay, for registration of the League under the Societies Registration Act, 1860. The League has filed the necessary memorandum of association and a copy of the rules and regulations of the society with the Registrar. A copy of these is at page 3 ante. The League claims registration as a charitable society.

8. The first question raised is whether certain schemes ^{run} by the League for collection of funds offend against the provisions of section 294A of the Indian Penal Code so that registration can be refused to the society on the ground that the means used by the society to achieve its objects are unlawful. The details of one such scheme are given in paragraph 3 of the Registrar's note at page 15 ante. It appears that the society proposes to collect funds by

holding certain monthly competitions and one annual competition and the total amount of each collection will be distributed at a certain percentage in prizes, expenses, for sales etc., Government tax, office expenses and reserve fund. The details given in this paragraph do not show to whom the prizes are awarded and by what prize winning numbers are determined. It appears from paragraph 3 of the

Registrar's letter on page 1 state, that the Society issues certain "donation receipts"

that such receipts are numbered and that the holders of a few selected numbers receive each prize. The schemes run by the League appear to be lotteries by every lottery is not punishable under section 294A of the Indian Penal Code. In order that a scheme may be held to fall within the mischief of this section it is necessary to prove that there is an actual drawing of lots, in its physical sense (See *Emp. vs. M. V. Vairavally*, I.L.R. 52 Bom. 57, also *Chelam C. In'or* No. 6495 dated 17th July 1940). If the prize winning numbers in the case of these schemes are pre-selected and no lots are drawn for the purpose there will be no offence under section 294A of the Indian Penal Code. Moreover if the League is granted a license under section 4 of the Prize Competition Tax Act, 1939 the schemes run by the League would not be unlawful, see section 21 of the above Act.

3. The next question raised is whether the Registrar can refuse registration on the ground that only a small percentage, namely 7.5% of the gross receipts from each scheme is to be utilized for charitable purposes. It appears that out of the total receipts, 10% of the amount is set apart for prizes, 25% for expenses and commissions in respect of sales, 12.5% for Government tax, 2.5% for office expenses, 2.5% as reserve fund and 7.5% for

charity. Although it appears that a considerable portion of the receipts is allotted for expenses and it is possible that the items may not be genuine, it is difficult to say definitely that the amounts will not be utilized for the purposes mentioned or that any part of it would go to the directors or be utilized for other purposes. In this view, $7\frac{1}{2}\%$ would be the only net proceeds left and if as stated by the Society the whole of these proceeds are proposed to be utilized for charitable purposes only, it will not be competent for the Registrar to refuse registration of the Society. The purposes of the Society as stated in the Memorandum of Association and the rules and the regulations of the Society are charitable purposes. Under section 3 of the Societies Registration Act, when a Memorandum of the Association and a copy of the rules and regulations referred to in section 2 are filed, it is the duty of the Registrar to register the Society. It is true that it would be competent to the Registrar to refuse such registration if he is satisfied that the purpose of the Society is not a charitable purpose and that the Society is not a charitable Society but there does not appear to be sufficient material in this case before the Registrar for his holding that the objects of the Society are not as stated in the Memorandum of the Association and the rules and the regulations filed with him or that the Society is not

charitable Society .

4. As the question is important and as a suit is pending in the High Court filed by the League against Government for grant of licenses to the League in respect of some of its schemes the Advocate General is requested to express his opinion on the questions raised above .

54/- .N.H.
20/10
Memorandums of Legal Affairs.

L.R. to the Advocate General, No. 8341 dated
the 28th October 1941.

V.V.K.
25/4/55.

Section 1 of the Societies' Act (XVI of 1860) provides that any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of the Act, may, by subscribing their names to a Memorandum of Association and filing the same with the Registrar, form themselves into a Society under the Act. Section 2 prescribes the contents of the Memorandum to be filed and provides that the Registrar shall issue a certified copy of the rules and regulations of the Society with the Memorandum. Section 3 provides inter alia that upon receipt of the Memorandum and certified copy being filed, the Registrar shall certify under his hand that the Society is registered under the Act. The subsequent provisions of the Act deal with the management of the affairs of the Society, its dissolution and other matters.

2. It is, therefore, clear that under the Act, it is obligatory on the Registrar to issue the certificate of registration if the Society is formed for any of the purposes mentioned in section 20 and if the requirements of section 3 are complied with.

3. It is not only that the Society proposes to carry out its objects, such as the objects referred to in the Memo of the Registrar dated the 11th of October 1941, are a matter distinct from the Memorandum of Association and the rules and regulations and cannot affect the question of registration. At the moment of registration all that the Registrar is concerned with is to see that the requirements of sections 1 and 2 have been complied with.

4. The objects of the Association contained in the Memorandum, excepting objects 7, 15, and 17, appear to be charitable objects. Object 7 is not confined to helping the poor. Object 15 is not restricted as to raising money but it is clear that the money to be borrowed or raised is for the purposes of the Association. Object 17 enables the Association to do agency business. This may

be pointed out to the promoters. If these objects are eliminated or suitably modified, the Registrar will be bound to issue a certificate of registration.

5. If after registration, the Association is found to promote and carry out schemes which offend against the law, suitable action will have to be taken.

SD/-

Advocate General.

8/11/41.

Office of the P.A.S.

The Secretary General was consulted in the matter of No. 1000. His opinion, dated the 8th November 1941 is forwarded herewith.

O.C. 22/P.A.S.
14/11

Commissioner of Legal Affairs.

O.N. to . . No. 2364, dated 25/11/1941.

Value
25/1/53.